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No. 92-422

In The

Supreme Court of the United States

October Term, 1992

CHARLES FRENCH, RAYMOND THOMASSON, MARYDA COLOWICK, MARIAN L. STEVENSON, MARY L. CRAWLEY AND MARY JOHNSTON,

Petitioners,

v.

THE METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

MUST THE FOUR-YEAR TERMS OF MEMBERS OF A CITY COUNCIL, WHO WERE ELECTED IN AUGUST AND SEPTEMBER, 1991 FROM SINGLE MEMBER DISTRICTS ESTABLISHED IN 1981, BE ABBREVIATED AND A SPECIAL ELECTION CONDUCTED WHERE THE RESPONDENT DID NOT HAVE A REASONABLE OPPORTUNITY TO COMPLETE ITS REASONABLY CONCEIVED PROCESS FOR DECENNIAL REDISTRICTING PRIOR TO THE AUGUST AND SEPTEMBER 1991 ELECTIONS?

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ON REMAND

French v. Boner, 786 F. Supp. 1328 (M.D. Tenn. 1992).

French v. Boner, 963 F.2d 890 (6th Cir. 1992).

COUNTERSTATEMENT OF CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS WHICH THIS CASE INVOLVES

In addition to the constitutional provisions, treaties, statutes, ordinances and regulations which were identified by Petitioners, Respondent, The Metropolitan Government of Nashville and Davidson County, Tennessee[1] asserts that this case involves Sections 15.01 and 18.06 of the Charter of the Metropolitan Government. Section 15.01 of the Charter provides in pertinent part as follows:

> **Sec. 15.01. When general metropolitan elections held; who may vote; qualifications of candidates.**
>
> For the purpose of electing a mayor, vice-mayor, five (5) councilmen-at-large and thirty-five (35) district councilmen, there shall be held on the

[1] Respondent The Metropolitan Government of Nashville and Davidson County, Tennessee will hereafter be referred to as "Respondent Metropolitan Government."

first Thursday in April, 1966, and on the first Thursday in August of 1971, and each four (4) years thereafter, a general metropolitan election. At such general election each voter shall be entitled to vote for one (1) candidate for mayor, one (1) candidate for vice-mayor, five (5) candidates for councilmen-at-large, and one (1) candidate for district councilman from the district wherein the voter resides. . . .

Section 18.06 of the Charter provides as follows:

Sec. 18.06. Redistricting of councilmanic districts.

Redistricting of the councilmanic districts set forth in Appendix Two of this Charter may be accomplished in the following manner:

Within six (6) months after the decennial census of 1970 and each one thereafter is published by the United States Census Bureau showing the population in the area of the metropolitan government, it shall be the duty of the planning commission to recommend to the council whether redistricting of the councilmanic districts is necessary to prevent substantial underrepresentation of particular areas as the result of population changes. If the planning commission shall recommend that redistricting is necessary, it shall also submit a proposed ordinance designed to accomplish its recommendation. Such ordinance shall also revise the school districts to the extent, if any, that may be deemed necessary. The council shall not amend, but may adopt without change such proposed ordinance. Upon approval thereof by the mayor, or passage over his veto, redistricting shall be accomplished and district councilmen shall be elected

accordingly at the next general metropolitan election.

The Council may reject the proposed ordinance for redistricting, in which event, by resolution under article 19 of this Charter, it shall submit to the people for approval at a special referendum election to be held within ninety (90) days an amendment to this Charter making effective the redistricting as recommended by the planning commission. At such referendum election the council may submit to the people its own plan for redistricting as an alternative to the proposal of the planning commission also submitted.

At the expiration of ninety (90) days subsequent to the receipt by the council of an ordinance of redistricting, as hereinabove provided, if such ordinance shall not have become effective and if the council shall have failed to submit the same to a special referendum election, then the members of the council shall not receive any further salaries until they take one action or the other.

COUNTERSTATEMENT OF THE CASE

This suit was instituted by Petitioners in the United States District Court for the Middle District of Tennessee to delay the August 1, 1991 election of the Metropolitan Council until after the completion of the decennial redistricting of the Metropolitan Council, or in the alternative, for the fashioning of a redistricting plan by the District Court prior to the June 6, 1991 qualifying date for the August 1991 election. Petitioners contended that their rights to equal protection guaranteed by the Fourteenth Amendment to the United States Constitution would be

violated if the August 1, 1991 election was held before the redistricting process was completed because the 1990 decennial federal census data revealed many of the districts established in the 1981 redistricting plan were malapportioned. The Petitioners brought this action pursuant to 42 U.S.C. § 1971, 1973, 1983 and 1988 and contended that the District Court had jurisdiction pursuant to 28 U.S.C. §§ 2201 and 2202 and 29 U.S.C. § 1343.

At the time of the filing of this suit, Respondent Metropolitan Government was in the process of redistricting the thirty-five single member districts of the Metropolitan Council pursuant to the procedures provided in Section 18.06 of the Charter of the Metropolitan Government. The 1990 census data was received by Respondent Metropolitan Government in mid-March 1991, a proposed redistricting plan was approved by the Metropolitan Planning Commission on April 25, 1991 and thereafter submitted to the Metropolitan Council. The Metropolitan Council rejected the redistricting plan proposed by the Metropolitan Planning Commission on June 3, 1991 and prepared its own redistricting plan as an alternative to be presented to the voters at a referendum. The redistricting plans proposed by the Metropolitan Planning Commission and the Metropolitan Council were submitted to the voters at a referendum election held on September 5, 1991 and the voters approved the redistricting plan proposed by the Metropolitan Council, all within six months of the receipt of the 1990 decennial census data.

While this redistricting process was underway, the regular metropolitan general election provided for in Section 15.01 of the Charter of the Metropolitan Government was held on August 1, 1991. The boundaries of the thirty-

five single member districts of the Metropolitan Council established in the October 1981 redistricting plan were utilized for this election and the runoff election held on September 5, 1991. The members of the Metropolitan Council serve a term of four years and therefore the members of the Metropolitan Council elected in August and September 1991 will hold office until September 1995.

The September 5, 1991 redistricting plan was the third redistricting plan adopted by Respondent Metropolitan Government since its creation in 1962. The 1971 redistricting plan was completed in time for use in the August 1971 election, and was also utilized for the 1975 and 1979 elections. The 1981 redistricting plan was adopted in October of 1981 and was utilized for the 1983, 1987 and 1991 elections.

Respondent Metropolitan Government moved to dismiss this case on the grounds that the District Court lacked subject matter jurisdiction because Petitioners' claims were not ripe, and because the Complaint as amended failed to state a claim upon which relief could be granted. The District Court granted this motion to dismiss, holding that judicial relief only became appropriate when a legislative body failed to redistrict in a timely fashion after having an adequate opportunity to do so, and since Respondent Metropolitan Government had not had an adequate opportunity to complete the redistricting process, the action was not ripe. *French v. Boner*, 771 F. Supp. 896, 903 (M.D. Tenn. 1991). The District Court also refused to enjoin the August 1991 election because Respondent Metropolitan Government had not

had an adequate opportunity to complete the redistricting process in time for the August 1, 1991 election. *Id.*, at 902-903.

The United States Court of Appeals for the Sixth Circuit reversed the dismissal of this case on ripeness grounds, holding that "the necessary facts are known" so as to permit the District Court to decide Petitioners' constitutional claims. *French v. Boner*, 940 F.2d 659 (6th Cir. 1991) (unreported disposition) (Petitioners' Appendix 41-42).[2] However the Court of Appeals affirmed the District Court's decision not to enjoin the August 1, 1991 election because Respondent Metropolitan Government did not have an adequate opportunity to complete the redistricting process because of the lateness of the census data and the time needed under the city charter and state election laws to turn the census data into election districts. *Id.* (P. App. 43). The Court of Appeals remanded the case to the District Court to consider Petitioners' constitutional claims. *Id.* (P. App. 44).

After the September 5, 1991 election, Petitioners filed a Motion for Summary Judgment in which they contended that the four-year terms of the members of the Metropolitan Council elected in August and September 1991 should be abbreviated and a new election held based on the redistricting plan approved by the voters on September 5, 1991. Petitioners did not challenge the validity of the redistricting plan approved by the voters on September 5, 1991. Respondent Metropolitan Government

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[2] The Appendix submitted by Petitioner will hereafter be referred to as P. App. ___.

filed a Cross Motion for Summary Judgment in which it insisted that the Fourteenth Amendment to the United States Constitution did not require the abbreviation of the terms of the members of the Metropolitan Council.

The District Court granted Respondent Metropolitan Government's Motion for Summary Judgment since Respondent Metropolitan Government had a reasonably conceived plan for decennial reapportionment as required by *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362, 12 L.Ed.2d 506 (1964), which it had followed to produce a constitutional redistricting plan. *French v. Boner*, 786 F. Supp. 1328, 1330 (M.D. Tenn. 1992). The Court of Appeals affirmed the decision of the District Court, holding that "[i]n any system of representative government, it is inevitable that some elections for four-year or longer terms will occur on the cusp of the decennial census . . . [and] [t]he terms inevitably will last well into the next decade. . . . " *French v. Boner*, 963 F.2d 890, 891 (6th Cir. 1992). The Court of Appeals concluded that the benefits of stability and experience in office provided by longer terms of office, the reduced costs of less frequent elections to the taxpayers and candidates and the protection of the settled expectations of the voters and the officials elected at the last election outweighed Petitioners' interest in mathematical equity in representation at any particular point in time. *Id.*, at 891-892. Petitioners' petition for rehearing was denied by the Court of Appeals on June 9, 1992. (P. App. 82-83).

SUMMARY STATEMENT OF RESPONDENT'S POSITION

Respondent Metropolitan Government respectfully insists that this Court should deny the petition for a writ of certiorari because the decision of the Court of Appeals was consistent with applicable decisions of this Court regarding decennial redistricting. The Fourteenth Amendment to the United States Constitution does not require the abbreviation of the terms of the members of the Metropolitan Council elected in August and September 1991 since Respondent Metropolitan Government has a reasonably conceived plan for decennial redistricting and did not have an adequate opportunity to complete the redistricting of the Metropolitan Council based on the 1990 decennial federal census prior to the August 1, 1991 election. No constitutional mandate exists which would require the shortening of terms of officials elected pursuant to such a reasonably conceived plan for decennial redistricting. As this Court explained in *Reynolds v. Sims, supra,* "legislative reapportionment is primarily a matter for legislative consideration and determination, and . . . judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." *Id.*, 377 U.S. at 586, 84 S. Ct. at 1394, 12 L.Ed.2d at 541.

This Court has never held that the Fourteenth Amendment to the United States Constitution requires the terms of legislative bodies which extend past the date of the completion of a reasonably conceived process for decennial redistricting be immediately abbreviated and new elections conducted utilizing the newly completed

redistricting plan. Neither has this Court ever held that immediate elections are required simply because of numerical imbalances in population in representative districts which may occur or be discovered at any particular point in time. In claiming that the decision of the Court of Appeals is in conflict with prior decisions of this Court, the Petitioners fail to note that in each of those cases the legislative body had an adequate opportunity to complete the redistricting process and either failed to reapportion or adopted a redistricting plan which was not subsequently approved by the Attorney General of the United States as required by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

Finally this Court has previously refused to consider claims similar to Petitioners' that immediate elections must be held because the voters who were placed in a new district as the result of the adoption of a redistricting plan were no longer represented in the legislative body. The fact that no member of the Metropolitan Council currently resides in the Thirteenth District as shown on the September 5, 1991 redistricting plan is a necessary consequence of decennial reapportionment which does not result in any violation of the United States Constitution.

ARGUMENT

In *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362, 12 L.Ed.2d 506 (1964), this Court held that legislative bodies may be reapportioned on a ten-year basis consistent with the mandate of the Equal Protection Clause. *Id.*, 377 U.S.

at 583-584, 84 S. Ct. at 1392-1393, 12 L.Ed.2d at 539-540. This Court explained its holding as follows:

> Decennial reapportionment appears to be a rational approach to readjustment of legislative representation in order to take into account population shifts and growth. . . . Limitations on the frequency of reapportionment are justified by the need for stability and continuity in the organization of the legislative system, although undoubtedly reapportioning no more frequently than every 10 years leads to some imbalance in the population of districts toward the end of the decennial period and also to the development of resistance to change on the part of some incumbent legislators. *In substance, we do not regard the Equal Protection Clause as requiring daily, monthly, annual or biennial reapportionment, so long as a State has a reasonably conceived plan for periodic readjustment of legislative representation.* While we do not intend to indicate that decennial reapportionment is a constitutional requisite, compliance with such an approach would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation. And we do not mean to intimate that more frequent reapportionment would not be constitutionally permissible or practicably desirable. But if reapportionment were accomplished with less frequency, it would assuredly be constitutionally suspect.

377 U.S. at 583-584, 84 S. Ct. at 1392-1393, 12 L.Ed.2d at 539-540. (Emphasis added). This Court noted that limiting the frequency of reapportionment to once every ten years might result in imbalances in population in the districts toward the end of the decennial period, but held

that such a problem was outweighed by the public interest of preserving the stability and continuity in the organization of the legislative system. *Id.*, 337 U.S. at 583, 84 S. Ct. at 1393, 12 L.Ed.2d at 540. This approval of decennial reapportionment occurred in a case involving the Alabama legislature, whose members were elected during even numbered years for four-year terms. *Id.*, 377 U.S. at 553, 84 S. Ct. at 1377, 12 L.Ed.2d at 522.

By limiting the frequency of redistricting to once every ten (10) years in a case where legislators were elected to four-year terms, this Court recognized that those representatives elected in the year of the decennial census would continue to serve after a new redistricting plan was adopted on the basis of that decennial census. Permitting these representatives to continue to serve for the remainder of their terms after the approval of the new redistricting plan is consistent with the purpose of limiting the frequency of redistricting so as to preserve the stability and continuity in the organization of the legislative system.

This Court has previously affirmed the decision of a three-judge district court which refused to require the State of Kansas to reapportion its legislature in order to maintain the type of mathematical exactness sought by Petitioners in the instant case. *Bacon v. Carlin*, 575 F. Supp. 763, 765-766 (D. Kan. 1983), *aff'd mem.*, 466 U.S. 966, 104 S. Ct. 2337, 80 L.Ed.2d 812 (1984). The district court refused to require immediate redistricting of the state legislature based on the 1980 federal census data when the current redistricting plan was less than ten years old and had not been constitutionally flawed when adopted. *Id.*, 575 F. Supp. at 766-767. The district court distinguished cases

such as *Whitcomb v. Chavis*, 403 U.S. 124, 91 S. Ct. 1858, 29 L.Ed.2d 363 (1971), (involving a redistricting plan which was unconstitutional when adopted), and *Sixty-Seventh Minnesota State Senate v. Beens*, 406 U. S. 187, 92 S. Ct. 1477, 32 L.Ed.2d 1 (1972); *Flateau v. Anderson*, 537 F. Supp. 257 (S.D.N.Y. 1982), *appeal dismissed*, 458 U.S. 1123, 103 S. Ct. 5, 73 L.Ed.2d 1394 (1983); *Farnum v. Burns*, 548 F. Supp. 769 (D. R.I. 1982); and *Honsey v. Donovan*, 236 F. Supp. 8 (D. Minn. 1964), (all involving redistricting plans which were less than ten years old but which were not adopted immediately after the release of the decennial census data), holding that these redistricting plans "were not the sort of 'decennial reapportionment' schemes that the Supreme Court indicated 'would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation.' " *Bacon v. Carlin, supra*, 575 F. Supp. at 765-766 (citing *Reynolds v. Sims, supra*).

As required by *Reynolds v. Sims, supra*, Respondent Metropolitan Government utilized a reasonably conceived scheme for decennial redistricting pursuant to Section 18.06 of the Charter of the Metropolitan Government. That scheme required that the Metropolitan Planning Commission approve a new redistricting plan for the Metropolitan Council within six months of the receipt of the decennial federal census data, so that the plan would be based on the most current census information. The 1990 decennial federal census data was received in mid-March, 1991 and a proposed redistricting plan was approved by the Metropolitan Planning Commission on April 25, 1991 and submitted to the Metropolitan Council. The Metropolitan Council rejected that plan and prepared

its own alternative plan. The plan prepared by the Metropolitan Planning Commission and the plan prepared by the Metropolitan Council were submitted to the voters for their approval at an election held on September 5, 1991, and the Metropolitan Council's plan was approved by the voters. This entire process was completed in less than six months and before the 1981 redistricting plan, which had been adopted in October of 1981, was ten years old.

While this reasonably conceived scheme was in the process of being completed, members of the Metropolitan Council were elected at the August 1, 1991 election and the September 5, 1991 runoff election from the districts established in the 1981 redistricting plan. The terms of these members of the Metropolitan Council will extend until 1995.

The use of four-year terms for the members of the Metropolitan Council, when applied to a decennial reapportionment scheme, necessarily produces this result. In other words since elections are held every four years, any decennial redistricting plan will provide the basis for councilmanic elections and representation for either eight or twelve years. For example, the 1971 redistricting plan was utilized for elections held in 1971, 1975 and 1979 and the members of the Metropolitan Council elected in 1979 served until 1983. The 1981 redistricting plan was first utilized for the 1983 elections, and again for the 1987 and 1991 elections. The 1991 redistricting plan will be utilized for elections held in 1995 and 1999.

Requiring new elections in a situation where the legislative body completed the reasonably conceived process for decennial redistricting immediately after an

election would conflict with the public interest of preserving the continuity and stability of the legislative system by requiring the members of the Metropolitan Council to immediately begin to campaign for reelection. The taxpayers and candidates would have to bear the additional cost of the unscheduled election, which might have the effect of deterring citizens of limited means from participating in this election. The year of knowledge and experience in the workings of the Metropolitan Government gained by these members of the Metropolitan Council would be lost if any of the incumbent members of the Metropolitan Council were not reelected. The public would be required to acquaint themselves with new candidates for office in a very short period of time, and if new members of the Metropolitan Council were elected, the public would have to become acquainted with these new representatives. These circumstances would prevent the members of the Metropolitan Council and the public from focusing their undivided attention on the important policy issues presented to the Metropolitan Council.

The Court of Appeals recognized that the public interest in preserving the continuity and stability of the legislative system outweighed Petitioners' interest in achieving mathematical equality of representation prior to the expiration of the terms of the members of the Metropolitan Council. *French v. Boner*, 963 F.2d 890, 891-892 (6th Cir. 1992). Therefore the Court of Appeals followed the guidance provided by this Court in *Reynolds v. Sims, supra,* in refusing to interfere with the continuity and stability of the legislative system by ordering immediate elections for the members of the Metropolitan Council.

The cases relied upon by Petitioners in contending that the decision of the Court of Appeals conflicts with prior decisions of this Court are easily distinguishable. *Watkins v. Mabus*, 771 F. Supp. 789 (S.D. Miss. 1991), *aff'd mem., in part, vacated in part as moot*, ___ U.S. ___, 112 S. Ct. 412, 116 L.Ed.2d 433 (1991), involved challenges to the 1982 legislative redistricting plan and the 1991 legislative redistricting plan for the Mississippi Legislature based on alleged violations of Sections 2 and 5 of the Voting Rights Act, 42 U.S.C. § 1973, *et seq.*, and the Fourteenth and Fifteenth Amendments to the United States Constitution. *Id.*, 771 F. Supp. at 791. Although the Mississippi Constitution did not require that legislative redistricting occur before 1992, the Mississippi Legislature had an adequate opportunity to complete the redistricting process and adopted a redistricting plan by June of 1991 so that it could be utilized in the primary and general elections held in September and November of 1991. *Id.*, at 791-792. However, the Attorney General of the United States interposed an objection to the 1991 plan when it was submitted to him for approval pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c *Id.*, at 792. The district court held that the Mississippi Legislature had failed to adopt a redistricting plan which complied with the United States Constitution and the Voting Rights Act after having had an adequate opportunity to do so, and therefore the district court was required to determine which plan would be used for the 1991 elections. *Id.*, at 798. Since the 1991 election was imminent, and the 1991 plan had not been approved pursuant to Section 5 of the Voting Rights Act, the court ordered that the 1982 plan be utilized as an interim plan, and the legislators elected

under that plan would hold office until a new plan was approved. *Id.*, at 807. In affirming in part the decision of the district court, this Court did not indicate that it was overruling the well-established and well-reasoned rule of *Reynolds v. Sims, supra,* discussed hereinabove. Thus *Watkins v. Mabus, supra,* is clearly distinguishable from the instant case since Respondent Metropolitan Government did not have an adequate opportunity to reapportion the Metropolitan Council prior to the August 1, 1991 election of the Metropolitan Council, and because Petitioners have not claimed that the 1991 redistricting plan approved by the voters on September 5, 1991 violates the Voting Rights Act or the United States Constitution.

The population deviations in representative districts which this Court condemned in *Board of Estimate of City of New York v. Morris,* 489 U.S. 688, 109 S. Ct. 1433, 103 L.Ed.2d 717 (1989), did not result from shifts in population within representative districts which had been established as part of a reasonably conceived plan for decennial redistricting, but instead from the original structure of the Board of Estimate which placed elected officials representing jurisdictions of widely disparate population on the board and gave each elected official an equal vote. *Id.*, 489 U.S. at 690, 109 S. Ct. at 1436, 103 L.Ed.2d at 725. The population deviations in the Metropolitan Council districts did not result from the original structure of the Metropolitan Council, but from just the type of shifts in population during the decennial period that decennial redistricting is designed to address. These population deviations were not ignored, as was the case in *Board of Estimate of City of New York v. Morris, supra,* but instead the redistricting process provided for in Section

18.06 of the Charter of the Metropolitan Government was utilized to produce a constitutional redistricting plan. However, this process was not completed in time for the August 1, 1991 election because of the lateness of the receipt of the 1990 federal census data and the time needed under the charter and state election laws to turn the census data into new election districts. Therefore, *Board of Estimate of City of New York v. Morris, supra,* provides no support for Petitioners' claim that a new election must occur immediately after a decennial redistricting plan is adopted in order to cure imbalances in population within representative districts which were revealed by the decennial federal census.

Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L.Ed.2d 663 (1963), involved the failure of the Tennessee General Assembly to adopt a redistricting plan as required by the Tennessee Constitution for over sixty years. *Id.*, 369 U.S. at 190-191, 82 S. Ct. at 695-696, 7 L.Ed.2d at 669-670. This Court held that the gross disproportion of representation to voting population resulting from the failure to redistrict on a decennial basis as required by the Tennessee Constitution would constitute a violation of the equal protection clause of the Fourteenth Amendment to the United States. *Id.*, 369 U.S. at 237, 82 S. Ct. at 720, 7 L.Ed.2d at 697. The disproportion of representation to voting population in this case resulted not from the failure of Respondent Metropolitan Government to conduct decennial redistricting, but from the inability of Respondent Metropolitan Government to complete the redistricting process contemplated by *Baker v. Carr, supra,* prior to the August 1, 1991 election for the Metropolitan Council. *Baker v. Carr, supra,* does not address when a redistricting

plan must be implemented and therefore does not support Petitioners' contention that new elections must be held immediately after the adoption of the 1991 redistricting plan.

Finally, this Court has previously refused to consider arguments similar to Petitioners' argument that new elections must be immediately conducted utilizing the 1991 redistricting plan because persons located in the Thirteenth District established by the 1991 plan are without a representative on the Metropolitan Council. *Pate v. El Paso County, Texas*, 337 F. Supp. 95 (W.D. Tex. 1970), *aff'd mem.*, 400 U.S. 806, 91 S. Ct. 55, 27 L.Ed.2d 38 (1970); *Ferrell v. Oklahoma ex rel. Hall*, 339 F. Supp. 73 (W.D. Okla. 1972), *aff'd mem. sub nom., Ferrell v. Hall*, 406 U.S. 939, 92 S. Ct. 2045, 32 L.Ed.2d 328 (1972). In these cases this Court affirmed the decisions of the district courts, rejecting the contentions of the plaintiffs that the constitutional rights of some if not all of the residents in the newly created districts were being violated because they were not permitted to immediately elect a new representative under a new redistricting plan and were not represented by a person whom they had an opportunity to elect. *Pate v. El Paso County, Texas, supra*, 337 F. Supp. at 98-99; *Ferrell v. Oklahoma ex rel. Hall, supra*, 339 F. Supp. at 81-82. In *Ferrell v. Oklahoma ex rel. Hall, supra*, the district court recognized that such situations are the inevitable consequence of decennial redistricting. *Id.*, at 82. Therefore, Petitioners' contentions regarding the lack of representation for residents of the Thirteenth District under the 1991 redistricting plan provide no support for their claim that the terms of all the members of the Metropolitan Council

should be abbreviated and new elections held utilizing the 1991 redistricting plan.

Since the decision of the Court of Appeals is not in conflict with prior decisions of this Court, there is no reason for this Court to review that decision. Therefore the petition for a writ of certiorari should be denied.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari filed by Petitioners should be denied.

Respectfully submitted,

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